

**RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY
OFFICE OF ASSIGNED COUNSEL (OAC)**
(Revised Effective January 1, 2009)
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A. PURPOSE

The mission of the Office of Assigned Counsel Program, hereinafter referred to as "OAC", is to arrange for the provision of qualified legal representation for indigent defendants who are entitled by law to court appointed attorney services and who cannot be represented by the offices of the Public Defender or the Alternate Public Defender due to conflict of interest issues. OAC assigns indigent defense conflict cases to well-qualified San Diego attorneys who are engaged in private law practice, who perform this appointed work as independent contractors, and who have been approved by OAC to participate in the indigent defense panel program after meeting the requirements for their participation.

B. ADMINISTRATION AND OPERATION OF THE PROGRAM

1. The OAC Program functions as an ethically separate division of San Diego County's Department of the Public Defender. The responsibility for administration of the Program shall vest in the Chief Deputy Public Defender or Deputy Public Defender assigned to serve as the Director of OAC by the Public Defender.
2. The OAC Director shall administer the Program under the general administrative supervision of the Public Defender; however, the OAC Director is required to maintain the confidentiality of client specific information relating to all cases assigned by OAC in order to avoid any conflict of interest. The OAC Director shall be responsible for the referrals and case assignment procedures, for keeping the program records, and for the development of statistical information and reports relating to the program. The OAC Director shall perform whatever other administrative functions may be assigned by the Public Defender consistent with the spirit and purpose of this independent ethically separate defender program.
3. The OAC Director is authorized to make the day-to-day administrative decisions regarding the operation of the OAC Program.
4. The OAC Director shall have the sole authority to approve, deny, or modify any ancillary request in any amount.

C. SCREENING COMMITTEES

1. Screening Committees shall be appointed by the OAC Director as he or she deems necessary to assist in evaluating panel members and panel applicants.
2. The Screening Committees shall be responsible for reviewing the lawyer applications for admission to each of the case classification panels and making recommendations to the OAC Director.
3. The OAC Director shall adopt Rules and Regulations regarding the operation of the Screening Committees.
4. Any Screening Committee member who has three absences, excluding extraordinary circumstances, from screening committee meetings in a calendar year shall be removed from the screening committee.

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5. Rotation of screening committee members is encouraged on a staggered, two-year basis.

D. ESTABLISHMENT, MEMBERSHIP AND ELIGIBILITY IN THE PANEL

1. The OAC Program shall deliver the indigent defense legal services through panels of qualified lawyers. The OAC Director shall establish requirements for qualification for these panels.
2. Each panel member must sign a contract agreeing to abide by the Rules and Regulations of the OAC program and agree to handle, according to OAC's published fee schedule (historically referred to as "*Exhibit G, Fee Documentation Schedule*") all cases to which appointed. The terms of the contract and fee schedule are subject to change by OAC upon written notice to the panel member.
3. The contract attorney shall declare under penalty of perjury that he or she:
 - a. understands and agrees that appointment to the OAC panel is a matter of privilege and not a matter of right, and that the panel member can be removed from the OAC panel at any time;
 - b. agrees to be bound by the Rules and Regulations of the OAC program;
 - c. maintains a principal office in the San Diego County judicial district for which the attorney has applied, and the majority of the attorney's practice is in San Diego County;
 - d. is an active member in good standing of the State Bar of California;
 - e. agrees to notify the OAC program within 10 days of actual notice, from the State Bar of California or the disciplinary agency in any state, that a complaint has been filed against the attorney;
 - f. agrees to notify the OAC program within 10 days of being arrested for or charged with a crime;
 - g. agrees to notify the OAC program within 10 days of a hearing on a "*Marsden* motion" filed against the attorney, regardless of the outcome of the hearing, and provide OAC with a copy of the Court minute order for the hearing (excluding privileged information). Failure to provide notification may result in suspension from the OAC panel (See *People v. Marsden*, 2 Cal.3d 118 (1970) [defendant has the right to have counsel discharged upon appropriate showing].);
 - h. agrees to notify the OAC program within 10 days of any sanctions imposed by any Court. Failure to provide notification may result in suspension from the OAC panel;
 - i. agrees not to be retained by the defendant or anyone providing funds on the defendant's behalf on an OAC-assigned case, or to accept monies or gifts from the defendant or those acting on the defendant's behalf;
 - j. agrees not to be retained by the defendant or anyone providing funds on the defendant's behalf for a separate case during the time that the OAC-assigned case is pending, or to accept monies or gifts from the defendant or those acting on the defendant's behalf. The panel attorney may be retained on a subsequent case for the defendant once the OAC-assigned case has been completed;
 - k. agrees not to accept an OAC-assigned case for a defendant if the defendant initially consulted with or retained the attorney for the same case, or if the defendant or those acting on his or her behalf is currently represented by the attorney on other cases;

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- l. agrees to complete and submit all non-privileged reports/documents requested by the OAC Program regarding the panel attorney's performance on an OAC assigned case, including billing and documentation of tasks completed. All costs for providing the requested reports and documents will be borne by the panel attorney, since OAC recommends that attorneys maintain complete, current and updated documentation on all OAC-assigned cases;
 - m. agrees to engage in at least 12 hours of criminal law continuing legal education and criminal law training each year, including the specific requisites for the highest Class elevation being applied for, as set forth in "Attachment A – Criteria for Admittance to Class Panels" to these Rules and Regulations; and
 - n. maintains professional liability insurance with limits of at least \$250,000/500,000, and shall notify the County 30 days before any change in the coverage or status of the policy.
- 4. All disputes shall be resolved in accordance with the Rules and Regulations of the OAC Program.
- 5. Panel attorneys shall agree to indemnify and hold harmless the County of San Diego, the OAC Screening Committee members, and all County officers and employees, from any and all claims, demands, actions, liability or loss which may arise, or be incurred because of any and all referrals, assignments, activities, and appointments resulting from the panel member's participation in the program, including but not limited to claims of legal malpractice and professional errors and omissions.
- 6. There shall be no application fee for admission to any of the OAC program panels.
- 7. OAC shall develop a training program in cooperation with the Public Defender and Alternate Public Defender offices. The training program will be made available to panel attorneys for the purpose of annual recertification in the OAC program and for general MCLE purposes.
- 8. A member may withdraw from the OAC Program at any time upon written notice to the Director. The member resigning will be expected, whenever possible, to complete the cases to which the member has been appointed.

E. APPLICATIONS AND RECERTIFICATION

- 1. Membership on a Panel shall be requested only by written application submitted on the form provided by OAC and shall include:
 - a. applicant's eligibility for membership, the requisite experience and educational requirement for qualification for panels, and designation of the selected judicial district for the assignment of cases;
 - b. a declaration of applicant's familiarity with and agreement to abide by the Rules and Regulations of the OAC Program and such other rules and regulations as may be adopted by OAC; and
 - c. a waiver of any and all claims against the County of San Diego and its officers, directors, employees, and the OAC Screening Committees for any liability or loss

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in connection with the operation of the Program or referrals, assignments and appointments.

2. Panel members may submit an amendment to their application for eligibility as panel membership in a higher case classification category at any time.
3. All applications for membership in the OAC program, and all members seeking elevation to a higher class or category, will be evaluated by the OAC Screening Committee for certification following submission of a completed application.
4. The Screening Committee, by a two-thirds vote of the full committee, may make a determination that good cause exists to waive a requirement necessary to certify the applicant in a class or category.
5. The Screening Committee may require the applicant to furnish additional information relevant to the applicant's qualifications for a particular panel. The Screening Committee may also seek independent verification of any information provided by the applicant during the application process.
6. Any new applicant or existing panel member of OAC who has been denied certification in any class or category may appeal this decision in person to the Screening Committee. Final appeal of the Screening Committee's decision can be made in writing to the OAC Director according to the procedures set forth in Section J. 6. of the Rules and Regulations. The decision of the Director shall be final.
7. All communications, deliberations, results and records of the Screening Committees activities shall be confidential.

F. GEOGRAPHICAL ELIGIBILITY

1. The geographical basis for appointment shall, whenever feasible, be the judicial district of the occurrence of the offense. Eligible attorneys who maintain their principal office in a given judicial district shall be eligible for appointment in cases arising from offenses committed in that judicial district.
2. Notwithstanding any provision relating to geographical eligibility, if an attorney has been appointed to represent a defendant in this county, the attorney may be appointed to represent that defendant in any case which may arise in any court in the county while the original charge is pending and judgment has not been imposed, provided the attorney meets the necessary experience standards. If the attorney does not meet the experience standards, the case will be assigned to a panel attorney qualified to handle the case.

G. CRITERIA FOR ADMITTANCE TO CLASS PANELS

1. Applicants for specific class panels must meet the minimum experience and educational requirements set forth in "*Attachment A "Criteria for Admittance to OAC Class Panels"*" and the related *Attachment B "Classification of Crimes."* These criteria and classifications of crimes are subject to change by the OAC Director, with appropriate notice to panel members.

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2. The Screening Committee may exercise its discretion and in unusual circumstances may waive or modify certain requirements if two-thirds of the full Screening Committee believes the applicant is otherwise qualified or not qualified to accept appointments in the specific case class under consideration.

H. ASSIGNMENT OF CASES

1. The case class panels shall be comprised of OAC member attorneys who meet the requisite experience and educational requirements, and shall be arranged according to judicial districts. Referrals for appointment shall be made from each panel on a rotating basis and based on the panel attorneys' availability to accept appointments.
2. Upon receipt of a request from a judge or clerk of the court, or upon receipt of notice from the Public Defender and Alternate Public Defender that a conflict exists or that for some other reason the Public Defender and Alternate Public Defender cannot represent the accused in a particular case, OAC shall provide the name of the next eligible attorney to the court for assignment. Referrals for appointment shall be made from each panel on a rotating basis and based on the panel attorneys' availability to accept appointments.
3. If a panel attorney refuses an appointment, he or she shall maintain his or her position on the panel list, but if the panel attorney refuses three (3) consecutive appointments, he or she shall be placed at the end of the panel list for that case category.
4. The attorney appointed by OAC shall be responsible for the case and shall not delegate its handling to another attorney. The attorney may allow another attorney to make some appearances or do other acts regarding the case, provided that the substitute attorney is a member of the OAC panel and is eligible to handle that class of case, and without OAC incurring any additional costs. An attorney appointed on a particular case who uses another attorney to make appearances on a regular basis is subject to review by the Director of OAC and subject to suspension from the list. This rule is designed to prevent attorneys from accepting cases and then having substitute attorneys make their appearances. OAC will only authorize payment to the attorney who has been appointed on the case.
5. To avoid disparity in appointments resulting from judges appointing individual attorneys, any panel attorney receiving a direct appointment to an OAC case from the court shall notify the OAC Director of the appointment and his or her name shall be rotated to the bottom of the list. If the appointment does not conform with these Rules and Regulations, including but not limited to cases in which an attorney is appointed on a case which is a higher level case or a case which is elevated to a higher level than the attorney is qualified to handle, the appointment shall be transferred, following consultation with the Court, to a qualified attorney. An OAC attorney must notify the OAC Director immediately if an appointment has been made outside or above his or her approved class level (i.e., Class I through VI) so that appropriate action can be taken. This rule shall not apply if the direct appointment is for a minor appearance such as a probation violation. This rule shall also not apply in juvenile proceedings.

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I. STANDARD OF CARE EXPECTATIONS FOR PANEL ATTORNEYS

1. All members are expected to perform in an ethical and professional manner. The following is a non-exclusive list of expectations of panel members:
 - a. submit all required reports and invoices promptly;
 - b. provide accurate information to clients and OAC ;
 - c. meet clients at the appointed time;
 - d. appear at scheduled hearings for client;
 - e. comply with the procedures for receiving OAC cases;
 - f. maintain a courteous and professional manner toward clients and OAC staff ;
 - g. promptly return telephone calls and answer letters from clients and OAC staff;
 - h. keep client informed of progress of case;
 - i. explain final disposition of case to client;
 - j. accept case assignments from OAC;
 - k. cooperate in the resolution of client's complaint and client's case;
 - l. maintain a principal office in the judicial district for which cases are accepted during period of panel membership;
 - m. meet experience and educational criteria or obtain peer review approval;
 - n. report to OAC the commencement of any disciplinary proceedings against the member by any disciplinary agency in any state, and any filing of an accusatory criminal pleading against the member;
 - o. abide by the rules and regulations of the OAC Program;
 - p. pay ancillary fees to providers within 30 days of receipt by attorney of such fees from OAC;
 - q. report sanctions imposed by any Court against the member;
 - r. not seek or use ancillary fees paid by OAC to employ a relative of the client to work on client's case;
 - s. not seek or use ancillary fees paid by OAC to offset ordinary office or staff overhead; and
 - t. report any action taken by any disciplinary agency in any state that renders the attorney ineligible to practice, including but not limited to suspension or disbarment.

Failure to abide by these guidelines may result in suspension, termination, or reclassification. A member who is suspended, terminated or reclassified is entitled to appeal the decision according to the appeal process set forth in Section J.

J. PROCEDURES FOR HANDLING COMPLAINTS AGAINST OAC PANEL ATTORNEYS INCLUDING SUSPENSION, TERMINATION, AND RECLASSIFICATION

1. Complaints from any source regarding the conduct of a OAC panel member will be investigated and evaluated by the OAC Director, who will determine if emergency suspension, interim suspension, or dismissal of the complaint is appropriate.
2. Emergency Suspension – A panel member may be temporarily suspended from the panel without notice in exigent circumstances following review by the OAC Director and confirmation by the Emergency Suspension Subcommittee established by OAC. Exigent circumstances are those situations where the facts that gave rise to the complaint, if known to the client, would likely affect a client's willingness to be represented by that

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attorney; or where such facts, if true, would likely bring discredit or disfavor on, or otherwise adversely affect the OAC Panel Program or the County.

The OAC Director will review this decision with the Emergency Suspension Subcommittee prior to taking any action. Upon confirmation by the subcommittee, the panel member shall be temporarily removed from the panel, and the following procedures will apply:

- a. The panel member will be notified in writing of the suspension and the reasons for it within 48 hours; with copies of the notification and underlying facts to the Screening Committee.
 - b. The panel member will be given an opportunity to respond in writing within 72 hours after notification of the action by the OAC Director and to appeal the decision.
 - c. If the panel member does not respond within 72 hours, or if after consideration of the panel member's response the OAC Director decides to continue the suspension, the complaint shall be considered at the next regularly scheduled meeting of the Screening Committee.
3. Interim Suspension – If, following review and investigation by the OAC Director, it is determined that emergency suspension is not necessary, but that the complaint is legitimate, the complaint will be referred to the Screening Committee for review at its next regularly scheduled meeting, and the following procedures will apply:
 - a. The OAC Director shall investigate the complaint, notify the panel member in writing of the facts of the complaint, and obtain a written response to the complaint from the panel member, unless asked not to do so by a governmental or regulatory agency.
 - b. Upon completion of the investigation, the OAC Director shall prepare a written report of the investigation, and advise whether reasonable cause exists under the OAC Rules and Regulations to suspend or remove the panel member from the OAC panel. The report will include a summary of the complaint and a summary of the response, if any, from the panel member, and a recommendation regarding interim suspension. If the OAC Director does not find reasonable cause, the matter shall be closed with no action; and, where appropriate, the panel member shall be so notified with a copy of the written report.
 - c. If, following review of the OAC Director's recommendation and all supporting materials including the panel member's response, the Screening Committee determines that suspension is appropriate, the attorney shall be placed on Interim Suspension, pending a formal hearing by the Screening Committee. If the Screening Committee does not find reasonable cause, the matter shall be closed with no action, and, where appropriate, the panel member shall be so notified with a copy of the written report.
4. Notice of Interim Suspension
 - a. OAC shall adopt a standard form of Notice of Interim Suspension, which shall contain a statement of the charges, a statement of whatever interim action the Committee has taken, and a copy of Section J of these Rules. The panel attorney shall be provided with an opportunity to appeal the decision of the Committee at the next regularly scheduled meeting of the Screening Committee. This date shall be provided in the Notice of Hearing.

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- b. The Notice shall be sent to the panel member at his or her last known address. The OAC Director shall send such Notice promptly upon receipt of the decision of the Committee.

5. Reclassification

The Screening Committees, in their discretion and by a decision of two-thirds of the full committee, may at any time reevaluate and reclassify a member to a higher or lower class. Written notice of the reclassification will be provided to the affected panel attorney within ten (10) days of the decision, and the panel attorney may appeal the decision to the Screening Committee by written request to the OAC Director.

6. Appeal Procedures for Suspensions, Removals and Reclassifications

a. Request for Hearing or Written Rebuttal

Following receipt of the Notice of Interim Suspension or a review of a reclassification decision by the Screening Committee, the panel attorney shall have ten (10) days to send a written request for a rehearing to the OAC Director or, submit a written rebuttal and any supporting material to the OAC Director.

b. Hearing Procedures

- 1) If a written rebuttal is submitted or a formal hearing is requested, the Screening Committee shall extend an invitation to the panel member to personally appear before the Screening Committee at its next regularly scheduled meeting. The Screening Committee will make a determination regarding permanent suspension or reclassification only after a full consideration of all rebuttal documents. The attorney may submit a written rebuttal prior to or at the time of the hearing. A quorum, consisting of at least five (5) members, shall be present during hearings; and only members who have been present during the entire hearing may vote to decide the matter unless the panel member stipulates otherwise. If the hearing pertains to a suspension, and if the underlying complaint was reviewed and the emergency suspension was confirmed by the Emergency Suspension Subcommittee, members of this subcommittee may be called as witnesses but will be recused from the vote. Subcommittee members shall be counted toward the quorum.
- 3) A final decision of the Screening Committee on any rehearing shall be reached by a majority of those voting.
- 4) If no hearing is requested and no rebuttal is submitted, interim suspension or reclassification shall become permanent upon the expiration of twenty (20) days of receipt of the notice.

c. Rules Applicable During Hearing

- 1) The OAC Director shall preside at each hearing.
- 2) The OAC Director shall designate a member of the Screening Committee to present evidence and call witnesses in support of the reclassification

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or the allegations in the Notice of Interim Suspension, and may question witnesses called by the panel member.

- 3) The panel member and/or his or her representative may present evidence and call witnesses in defense or mitigation and may question witnesses called by the Screening Committee.
- 4) The proceedings shall be recorded and transcribed only if requested by the panel member, who shall bear all costs including the cost of providing a transcript copy to the OAC Director.

K. CLASS VI CASES - ATTORNEY'S FEES AND EXPENSES AND DESIGNATION OF OAC CAPITAL CASE SUB-COMMITTEE (CCSC)

1. **Capital Case Sub-Committee:** A committee selected and appointed by the OAC Director shall be designated as the OAC Capital Case Committee (hereinafter CCC). The OAC Director shall be a permanent member of the CCC. Membership on the CCC shall not be limited to members of the Screening Committee and shall include only experienced homicide and/or capital-qualified defense attorneys.
2. **Initial Appointment and Review:** Upon being notified that there is a reasonable possibility that there may be a conflict with the public defender organizations as to a Class VI or Class VII murder case, the clerk of the originating court shall contact the OAC Director.

When the prosecution announces its intent to seek the penalty of death in a case, the OAC Director shall contact an attorney on the Class VII list currently maintained by OAC. The Class VII attorney shall be given the opportunity to investigate and evaluate the case in order to make an offer to represent the defendant. The attorney shall be paid for up to 25 hours at the rate of \$75 per hour to conduct an evaluation and investigation. The evaluation and investigation must be completed within 15 days of the initial contact. The attorney shall submit an offer to the OAC Director for consideration by the OAC Director and the CCC no later than 15 days from the date of initial contact. In addition, the attorney shall represent any legal interests of the defendant that may arise directly out of the covered case during the period of the attorney's evaluation and review. These services shall also be compensated at a rate of \$75 per hour if the attorney is not appointed to the case. If the attorney is appointed to the case, there shall be no separate payment for evaluation of the case or for any services provided to represent any legal interests of the defendant that may arise directly from the covered case during the period of the attorney's evaluation and review.

3. **Offer Procedure:** Upon completing the evaluation and investigation, and within 15 days of the initial contact, the attorney shall meet with the OAC Director to discuss the case, including the need for co-counsel if such need is identified. If the attorney does not want co-counsel appointed on the case, he or she shall notify OAC in writing of that decision. The attorney's offer shall be presented for review and comment by the CCC, and should propose a flat fee for compensation for full representation of the defendant, according to the procedure indicated below.

Bids shall range between \$75,000.00 and \$125,000.00, depending on the complexity of the case. The attorney can request a fee higher than \$125,000.00 based upon a declaration describing extraordinary legal, factual or evidentiary issues. Factors to be

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considered in assessing a case may include, but are not limited to, the number and nature of special-circumstance allegations, the number and nature of the noticed factors in aggravation and the nature and complexity of the mitigation evidence to be investigated and presented.

If the attorney offers to accept the case for a fee of \$75,000.00, it will not be necessary to set forth any additional representations in the offer. If the attorney offers to accept the case for a fee greater than \$75,000.00, the offer shall be accompanied by a declaration stating the offer and the nature of the legal, factual and evidentiary issues and any other factors that would justify the CCC recommending acceptance of the offer of representation at an amount greater than \$75,000.00. All offers must be made in writing, signed and dated by counsel.

4. **Acceptance or Rejection Recommendation by the CCC:** Upon receipt of the offer from counsel, the CCC shall have 5 working days to communicate its recommendation regarding acceptance or rejection of the offer to the OAC Director. An offer from the attorney to accept the case for \$75,000.00 shall be deemed to be automatically accepted. If the offer is accepted, counsel shall be immediately appointed to the case. If the offer is rejected, another attorney on the death-qualified appointment list shall be contacted and offered the case at the same fee recommended by the CCC and agreed to by the OAC Director and offered to the first attorney. The above stated procedure will be followed to allow the new attorney to evaluate the case and determine whether to accept the committee's offer. All appointments must come from the OAC Director after recommendation by the CCC, and the appointment and the details of the fee agreed upon will be confirmed in writing by a letter from the OAC Director to the appointed attorney that has been signed by the appointed attorney and returned to OAC to memorialize the agreement.
5. **Modification of Fees:** It is presumed by the CCC that when an attorney makes an offer to accept a case for a given fee, there will be no increase in fees recommended by the CCC. However, in circumstances in which there has been a change in the complexity of the case that could not have been foreseen by the attorney at the time the case was accepted, the attorney may petition the CCC to recommend modification by the OAC Director of the agreement to authorize a higher fee.
6. **Method of Payment:** Once an attorney's offer has been accepted, the schedule of payment shall be in three (3) parts:
 - a. At time of the acceptance of the offer, the attorney shall be paid one-third of the total fee, less any amount previously paid to the attorney for the evaluation, investigation and initial representation work as described above.
 - b. Absent extraordinary circumstances, if the capital defendant enters a guilty plea prior to preparation of pre-trial motions, the second one-third payment shall not be made.
 - c. At the time of pre-trial motion hearings or the commencement of the jury selection or at the discretion of the OAC Director, the second one-third payment shall be made to the attorney. If the case ends with a plea after substantial pre-trial motions have been prepared, the second one-third payment shall be made only after review of the motions by the OAC Director and his or her approval of the payment.

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- d. At the termination of the trial, either by sentence, inability of the jury to reach a verdict, and/or certification of the record, or acquittal, the final one-third payment (balance) shall be paid.
7. **Mistrial:** As part of the agreement to represent a defendant, counsel will agree to represent defendant for all trial proceedings. If a mistrial is declared, the fee for the retrial shall be negotiated. The schedule of payments shall otherwise remain the same.
8. **Second Counsel:** Following the meeting with the CCC and appointment on the case, appointed counsel may make application to the OAC Director for the services of second counsel. The application for second counsel shall state in detail why second counsel is needed. The request may be limited in scope and will be granted on showing of good cause in conformity with California law.

The lead attorney will select second counsel from the "Second Chair" or the Class V and/or Class VI or Class VII lists. Second counsel must meet the education and experience requirements for Class V and/or Class VI panel attorneys.

OAC will maintain a Second Chair list. If an attorney is appointed as second chair on a capital case he or she shall be moved to the bottom of the "Second Chair List" and shall not be appointed to another capital case until all other attorneys on that list have been appointed to a capital case. If the lead attorney selects a Class VI attorney as co-counsel or second chair, that attorney shall be placed at the bottom of the Class VI list.

The proposed Second Chair attorney shall be given the opportunity to investigate and evaluate the case in order to make an offer to represent the defendant. The attorney shall be afforded up to 25 hours at the rate of \$60 per hour to conduct the evaluation and investigation. The evaluation and investigation must be completed within 15 days of the initial contact, and the attorney shall submit an offer to the CCC. If the attorney is appointed to the case there shall be no separate payment for evaluation of the case.

Once the offer from Second Counsel has been accepted, the method of payment shall be the same as for the primary counsel, as outlined in Section K. 6. **Method of Payment**, above.

9. **Reduction of Status of Case to Non-Death Penalty Status:** In the event that prior to the termination of the case, the People elect not to seek the penalty of death, the CCC has discretion to recommend reconsidering of the authorized fee to reflect the modified status of the case and to recommend termination of the appointment of the Second Counsel attorney.
10. **Fee Disputes:** Determination of appropriate fees in capital cases that are subsequently reduced to non-death penalty status shall be made on a case-by-case basis by OAC. In the event of any dispute concerning fees in capital cases and in capital cases that are subsequently reduced to non-death penalty status, the burden shall be on the attorney to verify the amount of time spent on the case. In addition, the sole remedy in the event of any fee dispute shall be an appeal to the Screening Committee, according to the hearing procedures set forth in Section J. 6. The decision of the OAC Director after considering the Screening Committee's recommendation shall be final.

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11. **Penal Code 987.9 Expenses:** Application for expenses authorized pursuant to Penal Code 987.9 shall be made to the current Penal Code 987.9 judge and shall be ruled upon in conformity with the court's policy and California law.
12. **Acknowledgment of this Section:** Before any attorney shall be appointed on a capital case, the attorney shall read and sign an acknowledgment that he or she shall be bound by the terms and conditions of Section K.